Ellsberg Lawyer Raps Judge's Jury Selection

By Sanford J. Ungar
Washington Post Staff Writer

LOS ANGELES July 14 — The defense in the trial of Daniel Ellsberg and Anthony Russo today attakced U.S. District Judge W. Matt Byrne Jr. for allegedly failing to take necessary steps to assure the defendants an impartial jury.

Leonard B. Boudin, who represents Ellsberg, complained that Byrne's questioning of prospective jurors was characterized by a "lack of probing" and was a "pro forma examination" which met the technical requirements but did not elicit useful information for choosing a jury.

"Without an impartial jury," Boudin said in an emotional plea before the judge this morning, all other precautions about keeping the trial fair would become "worthless."

He also complained that Byrne, who originally estimated that a jury could be selected to try the espionage conspiracy and theft case in three days, is motivated more by a desire for speed than by evenhandedness.

With jury selection now in its fifth day, the judge has lengthened daily court sessions and suggested that he may hold Saturday sessions as well.

Boudin and Leonard I. Weinglass, chief counsel for Russo, contend that this is because of "undue pressure" from the prosecutors handling the case, who have repeatedly asserted that some of their witnesses — government officials in Washington — have had to postpone their vacations because of delays here.

In a comment that he has characteristically employed during the past week, Byrne reacted to the defense complaints by saying, "I'll deem that a motion and deny it."

The judge specifically refused once again to permit the lawyers on both sides of the case to conduct the detailed examination of each potential juror.

He also turned down a renewed defense demand that all prospective jurors who have security clearances or other connections with Southern California defense industries be automatically excluded from service.

The defense contends that such jurors cannot be objective in judging Ellsberg and Russo, who are charged with criminal violations in connection with disclosure of the top secret Pentagon papers, a history of U.S. involvement in Southeast Asia.

Although openly annoyed with the escalated defense attacks on his conduct of jury selection, Byrne did expand the scope of his questioning as the day went on.

As he began interrogation of a new group of 16 prospective jurors called on Thursday, the judge began asking, for example, what kinds of "briefings" they had had about security matters in the defense-oriented jobs.

But at the same time, Byrne began to incur the wrath of chief prosecutor David R. Nissen, who complained that the judge was putting too much emphasis on the presumption of innocence in his jury examination.

"The presumption of innocence is not a badge of partiality to be worn by either side," Nissen exclaimed. When the defense pressed for an explanation of that remark, Byrne interjected, "Never mind what the prosecutor says."

During interrogation today, some of the new prospective jurors expressed their views on the American involvement in Vietnam.

Edward H. Knapp, a retired mechanical inspector for Los Angeles County, said, "The only thing I object to is the country spending too much over there. It hurts the economy."

Douglas W. Silver, who had held a string of civilian jobs with the military, said that, "Originally I believed in the involvement. But as it progressed and the government of South Vietnam seemed unstable, I began to realize that it was a mistake."